Office Supreme Court, U.S.
FILED
MAY 11 196
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 917

EDWARD V. ZEGERS, d/b/a PRECISION WEATHERSTRIP CO.,

Petitioner,

vs.

ZEGERS, INC.,

Respondent.

REPLY BRIEF FOR PETITIONER

JUSTUS F. COOK, JR.,
DANIEL V. O'KEEFFE,
MARZALL, JOHNSTON, COOK & ROOT,
135 South La Salle Street,
Chicago 3, Illinois,
Attorneys for Petitioner.

INDEX

Page

I. The Present Case Meets the Important Prerequisites for Review by This Court. Respondent Advances No Valid Reason for Denial of the Petition. 1

A. Respondent Seeks to Induce this Court to Ignore the Fundamental Reasons for Granting the Petition. 1

B. The Questions Presented Are Accurately Stated in the Petition. 3

Conclusion. 3

Case Cited

U. S. v. Du Pont de Nemours Co., 353 U. S. 586, 589 1 L. ed. 2d 1057. 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 917.

EDWARD A. ZEGERS, d/b/a PRECISION WEATHERSTRIP CO.,

Petitioner,

vs.

ZEGERS, INC.,

Respondent.

REPLY BRIEF FOR PETITIONER.

I. THE PRESENT CASE MEETS THE IMPORTANT PREREQUISITES FOR REVIEW BY THIS COURT—RESPONDENT ADVANCES NO VALID REASON FOR DENIAL OF THE PETITION.

A. Respondent Seeks to Induce This Court to Ignore the Fundamental Reasons for Granting the Petition.

The entirely erroneous thesis, which the respondent seeks to have this Court accept, is summarized in the first sentence of respondent's brief, which states:

> "This case presents nothing more than the usual suit ... for patent infringement."

That is not the fact. This case involves (1) *misuse* of the patent in suit; and (2) invalidity because a patent application on a joint invention was *knowingly* filed in the name of a single inventor. Neither of these questions is involved in the "usual" patent infringement suit.

It is to be noted that nowhere in respondents' brief does it dispute the facts or the law set forth in the Petition. Respondent, in its brief, sets forth statements of the lower Courts. However, it will be noted that it always sets forth those statements as statements of the Courts, not as its own statements, and nowhere does it contend that the statements are correct. Apparently, respondent realizes that it cannot, in good faith, contend that those statements are correct.

Respondent contents itself with attempting to induce this Court to hold that the propriety of granting this writ is foreclosed because the lower Courts considered the evidence and ruled against the petitioner. That is an obvious red herring. There being no significant dispute as to the basic facts pertinent to the lower Court's decision, but only as to the conclusions which the lower Court drew therefrom, this Court may reverse the judgment below without even considering the question of whether findings of fact are clearly erroneous under Rule 52(a) of the Federal Rules of Civil Procedure (*U. S. v. Du Pont de Nemours Co.*, 353 U. S. 586, 589, 1 L. ed. 2d 1057).

The two questions presented in the Petition are both important basic questions in the interpretation of the 1952 Patent Act, which have not been ruled upon by this Court since the adoption of the 1952 Act, and which, in the public interest, should now be ruled upon by this Court.

B. The Questions Presented Are Accurately Stated in the Petition.

It is self-evident that the questions presented are accurately stated in the Petition.

The rulings of the Courts below are contrary to the decisions of this and other Courts, and to the law, prior to the enactment of the 1952 Patent Act, as pointed out in the Petition. It is submitted that the 1952 Patent Act has not changed the previously established law so drastically (1) that the plaintiff's undisputed *misuse* of the patent in suit, from prior to the trial until after its conclusion, no longer constitutes a bar to the prosecution of this action under the doctrine of unclean hands; and (2) that *knowingly* filing a patent application in the name of a single inventor, when it should have been filed in the names of joint inventors, no longer invalidates a patent.

Both questions are of public importance in the interpretation of, and in the orderly administration of justice under the 1952 Patent Act. The decision of the Court of Appeals in this case, if permitted to stand, will confuse the interpretation of the 1952 Patent Act. An authoritative ruling of this Court at the present time will lay to rest this confusion, and is plainly in the public interest.

CONCLUSION.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Julius F. Cook, Jr.,
Daniel V. O'Keeffe,
Marzall, Johnston, Cook & Root,
135 South La Salle Street,
Chicago 3, Illinois,
Attorneys for Petitioner.